SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 390

ROOSEVELT WARD, JR., PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX.

	Original	Print
Record from U.S.D.C. for the Eastern District of Louisiana, New Orleans Division		
Caption ..... (Omitted in printing)	1	1
Indictment	1	1
Minute entry—Arraignment and plea of not guilty	3	2
Minute entry—Case called, jury sworn, hearing and verdict	3	2
Motion of defendant for judgment of acquittal	6	3
Defendant's requested charges	7	4
Judgment and commitment	8	5
Transcript of testimony	9	5
Appearances	9	6
Testimony of August A. Chrestia	10	6
Testimony of Anthony J. Maloney, Jr.	40	22
Testimony of Roosevelt Ward, Jr.	45	24
Judge's charge	72	38
Notice of appeal	84	44
Designation of contents of record .. (Omitted in printing)	85	44
Statement of points	86	44
Amended and supplemental designation of contents of record ..... (Omitted in printing)	87	45
Motion and order allowing all exhibits to be sent to Court of Appeals in their original form (Omitted in printing)	88	45
Clerk's certificate ..... (Omitted in printing)	89	45
Supplemental transcript of record from U.S.D.C.	92	45
Caption ..... (Omitted in printing)	92	45
Supplemental designation of contents of record	93	46
Extracts from Reporter's transcript	95	46
Clerk's certificate ..... (Omitted in printing)	96	47
Proceedings in U.S.C.A. for the Fifth Circuit	97	47
Argument and submission ..... (Omitted in printing)	97	47
Opinion, Holmes, J.	98	47
Judgment	104	51
Clerk's certificate ..... (Omitted in printing)	105	51
Order allowing certiorari and leave to proceed in forma pauperis	106	51

1 [Caption omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA,
NEW ORLEANS DIVISION

No. 24,057—Criminal

UNITED STATES OF AMERICA

v.

ROOSEVELT WARD, JR.

* * * * * * * * * * *

2 **Indictment for Violation of the Selective Service Act of 1948—Filed June 19, 1951**

The grand jury charges:

Count 1. That on the 23d day of April, 1951, in the Eastern District of Louisiana, ROOSEVELT WARD, JR., a registrant of Selective Service Local Board No. 45, in and for the Parish of Orleans, State of Louisiana, did unlawfully and knowingly fail to comply with an order to report for induction, issued by said local board on March 26, 1951, as required by law.

Count 2. That between the dates of March 30, 1951 and May 31, 1951, ROOSEVELT WARD, JR., a registrant of Selective Service Local Board No. 45, in and for the Parish of Orleans, State of Louisiana, did unlawfully and knowingly fail to furnish said local board his correct address where United States mail might be delivered to him, as required by law. A TRUE BILL

(Sgd) WM. B. JONES
Foreman

(Sgd) JOHN N. MCKAY
United States Attorney

A TRUE BILL
New Orleans, La., Jun 19, 1951
(Sgd) WM. B. JONES
Foreman.

3 IN UNITED STATES DISTRICT COURT

Minute Entry—Arraignment and Plea of Not Guilty—August 8th, 1951

WRIGHT, *J:*

* * * * * * * * * * * *

Defendant through his counsel record, having been read the indictment, entered a plea of "NOT GUILTY" to violation of Title 50, Section 462, (Selective Service Act). Trial set for September 10th, 1951 at 10:00 o'clock A.M.

IN UNITED STATES DISTRICT COURT

Minute Entry—Case Called, Jury Sworn, Hearing and Verdict —September 10th, 1951

WRIGHT, *J:*

This cause was this day called for trial:

* * * * * * * * * * * *

4 The following named jurors were called, sworn on the voir dire and being acceptable, were sworn to try the issue joined herein:

1. Mrs. Lucille Babers
2. Marks L. Isaacks
3. Mrs. Bernadine Vankuren
4. Mrs. Annie C. Valley
5. Thomas Tate
6. Charles J. Tackaberry
7. Miss Dorothy Randall
8. Edwin R. Ranson
9. Miss Odette Bagur
10. Edmond W. Ullrich
11. Miss Marguerite Kehlor
12. Hamilton C. Jais

the balance of said jurors were excused subject to call.

Counsel for the United States moved the Court for a separation of witnesses, and the Court granted same, and all witnesses summoned herein were called, sworn, instructed by the Court and retired from the courtroom.

Counsel for the respective parties each made an opening statement.

The following named witnesses, previously sworn, were called to testify on behalf of the United States:

AUGUST A. CHRESTIA,
ANTHONY J. MALONEY,

and, after hearing the oral testimony, and documentary proof offered and filed, counsel for the United States rested its case in chief.

Roosevelt Ward, Jr., the defendant, was called, sworn by the Deputy Clerk, and offered oral and documentary evidence in his

own behalf, after which, counsel for the United States moved
5 the Court to enter a nolle prosequi as to Count 1 of the indictment and elected to proceed with Count 2, which motion was granted, and there being no further evidence or testimony offered, counsel for both parties announced that they would rest.

Counsel for the defendant then moved the Court to instruct the jury to disregard all evidence relating to failure of the defendant to notify the board of his change of address, etc., and the Court denied same. Counsel then moved the Court for a directed verdict of acquittal, for the reasons orally assigned, and the Court overruled same.

After hearing arguments of counsel, and receiving a charge from the Court, the jury retired to deliberate upon their verdict. After deliberation the jury returned into Court and requested further instruction. Having received a further charge, the jury again retired to deliberate and returned into open Court, and then and there, through their foreman, did render and deliver the following verdict, to-wit:

"We the jury find the defendant Guilty as charged.

(Sgd) E. R. RANSON,
Foreman
Sept. 10, 1951."

Counsel for the defendant then moved the Court that the jury be polled, and each of said jurors having been called individually and interrogated by the deputy clerk, announced that the verdict
6 rendered was their true verdict in the premises, and the Court ordered that the verdict be recorded, and the jury discharged subject to call.

Counsel for defendant then announced his intention of an appeal, and on motion of counsel for the United States, it was ordered that pending such appeal, defendant be enlarged on bail in the sum of $20,000.00, and in default thereof, defendant be remanded to the custody of the United States Marshal.

IN UNITED STATES DISTRICT COURT

Motion of Defendant for Judgment of Acquittal—Filed September 10, 1951

Comes now the Defendant and respectfully moves the court for judgment of acquittal upon the second count of the indictment and for ground of such motion says, that it charges that he did "fail to furnish said local board his correct address where United States mail might be delivered to him"; whereas under the regulations as proven, having the force of law he was only required to "keep his

local board advised at all times of the address where mail will reach him."

And for further ground of such motion he says, that it affirmatively appears from the evidence that he did furnish said local board with "his correct address where United States mail might be delivered to him", and the fact that such mail which so might have been delivered to him, was not so sent and handled
7 that it was actually delivered, is an act and default of the agents of the government of the United States, and not an act and default of this defendant wherefor he can be held criminally responsible.

(Sgd) ALVIN B. JONES
(Sgd) JOHN M. COE,
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

Defendant's Requested Charges

(1) The Court charges you that it is charged against the Defendant in the first count that he did "knowingly fail to comply with an order to report for induction", and before this charge can be said to be proven, you must find from the evidence beyond a reasonable doubt that the Defendant knew that an order for his induction had been issued, and so knowing, did fail to comply therewith.

(2) The Court charges you that under the second count it is charged that the Defendant did unlawfully and knowingly fail to furnish his local Board with his correct address where United States mail might be delivered to him; and if you find from the evidence that the Defendant furnished to said Board one or more of his correct addresses at which mail would be delivered to him, he is not guilty, and you must find a verdict of acquittal.

(3) The Court charges you that Subsection (b) of Sec.
8 1642.41 of the Selective Service Regulations in force at the time of the events charged in the indictment provided as follows:

> "In endeavoring to locate and to secure the compliants of a delinquent prior to reporting him to the United States Attorney, the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address, as shown on Registration Card (or other person likely to know his whereabouts."

and in determining whether or not Defendant in good faith furnished or failed to furnish his Local Board with his address where United States mail might be delivered to him, you may take into consideration these provisions of the regulations and the practice of communicating with a registrant through his employer therein directed.

(Sgd) ALVIN B. JONES
(Sgd) JOHN M. COE
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

Judgment and Commitment—Filed September 10, 1951

On this 10th day of September, 1951, came the United States Attorney, and the defendant Roosevelt Ward, Jr., appearing in proper person, and by counsel, Alvin B. Jones and John M. Coe, Esquires, and,

The defendant having been convicted on a verdict of
9 guilty of the offense charged in the second count of the indictment in the above-entitled cause, to-wit: VIOLATION OF THE SELECTIVE SERVICE ACT, count one having been dismissed on motion of the Government, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of three (3) years.

IT IS FURTHER ORDERED THAT the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Sgd) J. SKELLY WRIGHT
United States District Judge.

IN UNITED STATES DISTRICT COURT

Transcript of Testimony

Proceedings had before HONORABLE J. SKELLY WRIGHT, Judge United States District Court for the Eastern District of Louisiana, in open Court in the above entitled and numbered cause, on September 10, 1951, at New Orleans, Louisiana.

Appearances:
RICHARD C. BALDWIN, ESQ., Asst. U. S. Attorney
HILARY GAUDIN, ESQ., THOMAS WICKER, ESQ.,
Asst. U. S. Attorneys for the United States
JOHN M. COE, ESQ., ALVIN B. JONES, ESQ.,
Attorneys for Defendant.

Mr. McKay: Your Honor, may we have the witnesses called and sworn, please?

The Court: Call the witnesses. (Witnesses called and sworn). You are instructed not to discuss this case with anyone, not even among yourselves. You may discuss it with Counsel representing the government or Counsel representing the defendant. Step in the next room. (Witness excluded from the Court room).

August A. Chrestia: Witness, being duly sworn and examined on behalf of the government, was examined and testified as follows:

Direct Examination, by Mr. Baldwin.

Q. Please state your name?
A. August A. Chrestia.
Q. What is your occupation, Mr. Chrestia?
A. As Chief Clerk of the Orleans Parish Local Board, Chief Coordinator of Records.
Q. What are your duties as chief coordinator?
A. Chief Clerk, custodian of the records of the Local Board, supervision of local clerks, and inspection of regis-
11 trants for the Local Board.
Q. Do you know Roosevelt Ward?
A. I do.
Q. Do you see him present in this Court room?
A. I do.
Q. Will you point that person out?
A. The man in the brown suit behind the defense attorney.
Q. Now, sir. I show you form marked SSS Form No. 1 and ask if you can identify this for me?
A. That is a card in the name of Roosevelt Ward, Jr.
Q. Now, sir, from this card will you read the address that this registrant gave at the time that he registered?
A. Place of residence, 2309 Upperline Street, New Orleans, Louisiana.
Q. From that card will you read the name of the person who would always know his whereabouts?
A. Dorothy Ward, 2309 Upperline St., New Orleans, Louisiana.
Q. From the same card read his employment?
A. Occupation, student.

Q. Does it state where?
A. Wilberforce University, Wilberforce, Ohio.

Offer: Mr. Baldwin:

In connection with the witness' testimony I should like to offer, introduce and file in evidence exhibit marked G-1, with permission of the Court to show it to the jury.

(Hands document to the jury).

Mr. Coe: No objection.
12 The Court: Let it be admitted.

By Mr. Baldwin: Q. At the time that a person registers with the Local Board, what if any, information is given to that registrant?

A. The registrant is informed that he must keep the local Board advised of his address at all times, and that he carry his registration card in his possession at all times.

Q. You say the registrant is informed that he must keep his card in his possession at all times?

A. Yes, sir.

Q. Is this issued to him at the time he registers?

A. Yes, sir.

Q. I now show you exhibit marked G-2 for identification and ask you if you can identify it?

A. Yes. This is a sample of the registration certificate given to registrants at the time of registering.

Q. Is this a copy of the certificate that the registrant must always keep in his possession?

A. Yes, sir.

Q. I ask you to read the bottom of that card, what appears in heavy print?

A. "The law requires you to have this card in your possession at all times for identification and to advise your Local Board of change of address."

Offer: Mr. Baldwin:

13 In connection with the witness' testimony the government offers, produces and files in evidence the card marked G-2 and asks permission to show it to the jury.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Document handed to jury).

The Court: You want them to see anything other than his address?

Mr. Baldwin: No, Your Honor.

Q. I now show you, sir, an exhibit marked G-3 for identification and ask you if you can identify this exhibit?

A. This is Selective Service Form No. 101, which is commonly referred to as a cover sheet, into which all the records of a registrant are placed.

Q. What name appears thereon?

A. Roosevelt Ward, Jr.

Q. All papers pertaining to Roosevelt Ward, Jr. are contained in this folder. Is that correct?

A. Yes, sir.

Q. Now, sir, will you explain the addresses and the information contained on this cover sheet, will you explain how that information is acquired?

14 A. At the time the cover sheets are originally made, they bear the same address as that given by the registrant at the time of registering. In this case, the registrant gave his address as 2309 Upperline Street.

Q. Will you be a little more specific and connect that with a number, if such exists?

A. I don't understand your question.

Q. You say at the time the person registers he gives an address?

A. Yes, sir.

Q. And that that address is recorded on his cover sheet?

A. Yes, sir.

Q. I see. You have tied that in specifically.

A. The information is extracted from this registrant's card, which is completed at the time of registration.

Q. What address was then given?

A. We have a change of address to 72 West 107th Street, New York City, New York. This address was given on March 30, 1950.

Q. Now, sir, what is the procedure of the Selective Service Board once a registrant has registered, what is the next step?

A. He is then assigned an order number, according to his date of birth, chronologically, and the cover sheet is made, the registrant's name, date of birth.

15 Q. Once this cover sheet is prepared, what then is done?

A. The registrant is then mailed his Selective Service questionnaire.

Q. Can you tell from the document which you have in your hand if the Selective Service questionnaire was mailed to the registrant?

A. Yes, sir. As a matter of fact there are two dates on here. The original questionnaire was mailed to the registrant on June 7, 1949 and below that is the notation duplicate mailed March 21, 1950.

Offer: Mr. Baldwin:

In connection with the witness' testimony the government offers, introduces and files in evidence exhibit marked G-3.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Counsel hands document to the jury).

By Mr. Baldwin: Q. I now show you, sir, exhibit marked G-4 for identification purpose, and ask you if you can identify same?

A. This is a carbon copy of a letter addressed to Roosevelt Ward, Jr., at 2309 Upperline Street, New Orleans, Louisiana.

Q. What date is reflected thereon?

A. October 18, 1949.

16 Q. Now will you read the letter, please?

A. The letter reads as follows:

"Dear Sir: A draft questionnaire was mailed you on June 7th and to date we have not received same completed by you. In the event that you did not receive this questionnaire, contact our office and a duplicate will be mailed to you."

And it is signed by the Assistant Clerk of Local Board No. 45.

Q. Of your own knowledge, where did the address on that letter come from?

A. That came from the address given by the registrant at the time of registration.

Offer: Mr. Baldwin:

In connection with the witness' testimony the government offer, introduces and files in evidence exhibit marked G-4.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibit handed to the jury).

By Mr. Baldwin: Q. I now show you exhibit marked G-5 for identification, and ask you if you can identify that?

A. Yes, sir. That is the Selective Service System Classi-

17 fication Questionnaire.

Q. Whose name appears thereon?

A. Roosevelt Ward, Jr.

Q. What is the date that questionnaire was mailed?

A. March 21, 1950. This is a duplicate questionnaire.

Q. You have already testified that one was sent to him on June seventh?

A. That's right.

Q. What date was that questionnaire returned to the Selective Service Board?

A. March 30, 1950.

Q. And it was properly filled out?

A. Yes, sir.

Q. Now, sir, what address was that questionnaire mailed to?

A. 2309 Upperline Street, New Orleans, Orleans Parish, Louisiana.

Q. And where did that address come from?

A. From the registrant's card and also from the cover sheet of the registrant.

Q. Now, sir, on page 2 of this questionnaire under "Statements of the Registrant" "Series 1.—Identification", is there a change of address recorded there on?

A. Yes, sir.

Q. Will you give that change of address there?

A. "My address now is 72 West 107 Street, New York,
18 Manhattan County, New York."

Q. Will you just retain possession of that, sir? I now show you G-3 which has already been offered in evidence and ask you if there is a change of address thereon?

A. One of the questionnaires returned by the registrant, the clerk was instructed to check the address given by the registrant, and should the address be any different to that given previously, it would be recorded on this cover sheet for change of address.

Q. What is the purpose of the questionnaire which you have identified?

A. To furnish information in order that the Local Board members may determine the registrant's proper classification.

Q. Will you look on the last page of this questionnaire and tell me what notations appear thereon?

A. Under date of April 27, 1950 the registrant was classed in A-1 by a vote of three to nothing. On April 28, 1950 it is stamped, denoting SSS Form 110 was mailed. That form was mailed to the registrant.

Q. I show you exhibit G-6 for identification and ask you to tell us what that is?

A. Selective Service Form No. 110 which is notice of classification, and also bears date of mailing.

Q. From your previous testimony this is a copy of the classification card sent to the registrant?

19 A. That's right.

Q. Will you read what appears in the last paragraph of this card?

A. "The law requires you: (1) to keep in touch with your local board; (2) To notify it of any change of address; (3) To notify it of any fact which might change your classification; (4) To comply with the instructions on the notice of classification part of this form."

Offer: Mr. Baldwin:

In connection with the witness' testimony the government offers, introduces and files in evidence the card marked G-6.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibit handed to the jury).

By Mr. Baldwin: Q. Mr. Chrestia, will you continue as to what occurred—

A. On January 15, 1951 SSS Form No. 223 was mailed to the registrant.

Q. I now show you exhibits marked G-7 and G-8 for identification, and ask you if you can identify them?

A. G-7 is an Order to Report for Armed Forces Physical Examination.

20 Q. Who is that addressed to?

A. That is addressed to Roosevelt Ward, Jr.

Q. And what is the address appearing thereon?

A. No address appearing on the form. The address appears on the envelope which was returned by the Postal authorities.

Q. What address appears on the envelope?

A. 72 West 107th Street, New York, New York.

Q. I ask you if that is not the same address which appears on Selective Service questionnaire on page two?

A. Yes, sir, same.

Q. What disposition was made of that letter?

A. The Order to report for physical examination?

Q. Yes.

A. It was returned unclaimed.

Q. You stated this notice to report for physical examination was returned?

A. That's right.

Q. Will you read what appears on G-8, what notation appears thereon?

A. It has a postal stamp which reads: "Returned to sender. Removed. Left no address. New York, New York."

Offer: Mr. Baldwin.

In connection with the witness' testimony the government offers, introduces and files in evidence the letter and envelope marked G-7 and G-8.

21 Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibits handed to the jury).

By Mr. Baldwin: Q. What is the procedure of a Local Board when any communication is sent to a registrant and is returned?

A. That would depend on which phase of the process it occurred.

Q. Well, we are at the physical examination phase and you have testified that this order to report for physical examination was returned. I now ask you what procedure does the Local Board go through?

Objection: Mr. Coe:

We object. The regulations themselves are the best evidence of what the procedure is.

The Court: Suppose you ask the witness what was done next.

By Mr. Baldwin: Q. What was done, sir?

A. To my knowledge the registrant was ordered to report for induction.

Q. I now show you, sir, an exhibit marked G-9 for identification and ask you if you can identify it?

22 A. This is a carbon copy of a form that the Selective Service use in endeavoring to locate a registrant, and is addressed to the person who would also know his address, as reflected by his registration card.

Q. Who is that addressed to?

A. To Mrs. Dorothy Ward, 2309 Upperline Street, New Orleans, Louisiana.

Q. Where was the name and address of that person obtained from?

A. From the registration card. I don't recall the particular item, but from the registrant's card as the person who would know his address.

Q. Is it the procedure of the Board to notify this person? When did the Board notify such person?

A. The Local Board endeavors to locate the registrant from the information given by him on his registration card.

Q. What is the date appearing on that exhibit?

A. January 25, 1951. A carbon copy of this card was also sent to Wilberforce University, Wilberforce, Ohio.

Q. I now show you exhibits marked G-10 and G-11 for identification and ask you if you can identify these?

A. G-10 also is a copy of form letter addressed to College of Education and Industrial Arts, Wilberforce, Ohio, endeavoring to locate the whereabouts of Roosevelt Ward, Jr.

Q. Will you please read that?

23 A. "This Board is desirous of locating Roosevelt Ward, S.S. No. 16-45-30215. It will be appreciated if you will furnish this office with any information which might aid us in locat-

ing him. We are enclosing a self-addressed envelope which requires no postage for your convenience in replying."

Offer: Mr. Baldwin.

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibit marked G-10.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibit handed to the jury).

By Mr. Baldwin: Q. What is this exhibit marked G-11?

A. This is a carbon copy of a letter addressed to Mrs. Dorothy Ward, 2309 Upperline Street, New Orleans, Louisiana, a copy sent to the Registrar, Wilberforce University, Wilberforce, Ohio. Shall I read it:

Q. All right, sir.

A. "Dear Madam:

"This Board is desirous of locating Roosevelt Ward who
24 gave your name as the person who would always know his address. It will be appreciated if you will furnish this office with any information which might aid us in locating him. We are enclosing a self-addressed envelope which requires no postage for your convenience in replying."

Q. Will you read the notation appearing on the bottom?

A. "We do not have Roosevelt Ward registered at Wilberforce University. Please write to the College of Education and Industrial Arts, Wilberforce, Ohio. He may be a student there."

Signed by F. A. McGinnis, Registrar.

Offer: Mr. Baldwin.

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibit marked G-11.

Mr. Coe: No objection.

The Court: Let it be admitted.

Offer: Mr. Baldwin.

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibit marked G-9.

Mr. Coe: That is the same one?

25 Mr. Baldwin: Yes.

The Court: Let it be admitted.

By Mr. Baldwin: Q. I show you exhibit marked G-12 for identification, and ask you what that is?

A. That is a letter received from the College of Education and Industrial Arts, received March 19, 1951.

Q. Who is that letter addressed to?

A. Miss Rita K. Vicknair, Clerk, Local Board No. 45, 320 Magazine Street, New Orleans, Louisiana.

Q. Will you read that letter?

A. "RE: Roosevelt Ward, S.S. No. 16-45-30-215. Dear Miss Vicknair: In reply to your inquiry regarding the above-named registrant, we wish to advise that he was enrolled at this institution during the school year 1946-1947. At that time his address was, 2309 Upperline Street, New Orleans, Louisiana. I regret that we are unable to give you any more recent information about this registrant."

That is signed by Melvin A. Johnson, Bursar.

Offer: Mr. Baldwin:

In connection with the witness' testimony, the government
26 would like to offer, introduce and file in evidence exhibit marked G-12.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Document handed to the jury).

By Mr. Baldwin: Q. I now show you exhibit marked G-13 for identification, and ask you what that is?

A. This is a letter received February 2, 1951, from Mrs. Dorothy Ward under date of January 31, 1951.

Q. Now, sir, who is Mrs. Dorothy Ward?

A. Sir, Mrs. Dorothy Ward is the person who is listed on the registrant's card as the person who would always know the registrant's address.

Q. Will you read the letter?

A. "To the Selective Service: In reply to your letter about Roosevelt Ward, Jr., I haven't heard from him and don't know where he is located. His last address that I know was 204 W. 149, New York City. Since then I haven't heard from him. Very truly, Mrs. Dorothy Ward."

Offer: Mr. Baldwin:

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibit marked G-13.

27 Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibit handed to the jury).

By Mr. Baldwin: Q. I now show you exhibits marked G-14 and G-15 for identification and ask you if you know what they are?

A. Yes, sir. This is the original letter written to Roosevelt Ward, Jr. at 204 W. 149, New York City, New York.

Q. Can you tell we where that address came from?

A. Sir, that address apparently came from the information given by the registrant's mother, Mrs. Dorothy Ward.

Q. What disposition is reflected as to that letter?

A. The letter was returned, the envelope marked "Not at address given. New York, New York."

Q. And what is the address on that?

A. "204 W. 149, New York City, N. Y."

Q. Will you read that letter, please?

A. "Roosevelt Ward, Jr., 204 W. 149, New York City, N. Y. S.S. No. 16-45-30-215. Sir: On January 15, 1950, we mailed you the enclosed Order to Report for Armed Forces Physical Examination at your last mailing address reported to us. This notice was returned to us marked 'Moved'. You have failed to no-
28 tify this Board of your change of address. We are enclosing notice mailed you previously and ask that you bring same to Local Board within your jurisdiction and request transfer of physical examination. Failure to comply with our orders will eventually lead us to reporting you to the U. S. District Attorney as a Delinquent. Give this matter your immediate attention! Yours very truly, By Direction of the Board: Local Board No. 45, Rita K. Vicknair, Clerk."

Offer: Mr. Baldwin:

In connection with the witness' testimony, the government would like to offer, introduce and file in evidence exhibits marked G-14 and G-15.

Mr. Coe: No objection.

The Court: Let them be admitted.

(Exhibits handed to the jury).

By Mr. Baldwin: Q. Will you again refer to the exhibit which you have in your hand—

The Court: For the record, give the number.

By Mr. Baldwin: Q. G-5. What is the next step taken in the process?

A. "Failed to report for induction."

Q. I now show you exhibits marked G-16 and G-17 and ask you if you can identify those?

29 A. That is Selective Service Form 252 which is an Order to Report for Induction.

Q. Who is it addressed to?

A. Roosevelt Ward, Jr.

Q. And to what address?

A. 72 W. 107th St., New York, New York.

Q. And where did that address come from?

A. That address was given by the registrant when he returned his questionnaire.

Q. And what was the disposition of that letter as reflected by the envelope?

A. This notice was returned by the Postal authorities in New York with the notation: "Return to sender. Moved. Left no address. New York, New York."

Offer: Mr. Baldwin:

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibits marked G-16 and G-17.

Mr. Coe: No objection.

The Court: Let them be admitted.

(Exhibits handed to the jury).

By Mr. Baldwin: Q. What was the next step taken by the
30 Selective Service System?

Objection: Mr. Coe:

I don't think any subsequent steps are material against this man for failure to report.

The Court: I overrule the objection.

A. I believe the registrant was reported to the U. S. Attorney for failing to appear for induction.

By Mr. Baldwin: Q. I now show you exhibit G-18 for identification and ask you if you know what that is?

A. That is Selective Service Form No. 301 entitled: "Delinquent Registration Report".

Q. Who is that addressed to?

A. "Honorable John N. McKay, United States Attorney, Post Office Building, New Orleans, Louisiana.

Q. And who does that refer to?

A. Roosevelt Ward, Jr., aliases none, last known address 2309 Upperline Street, New Orleans, Louisiana.

Q. I ask you to look at Part Three and read the information contained thereon?

A. "Effort made to locate man—"

Objection: Mr. Coe:

We submit that is irrelevant and immaterial.

31 The Court: It is an official record of the United States. Overruled.

By Mr. Baldwin: Q. I show you exhibits G-18, G-19, G-20, G-21 and G-22 for identification and ask you if you can identify these as pertaining to the registrant?

A. G-18 is Selective Service Form No. 301 which is a delinquent registration report.

Q. Who is it addressed to?

A. Roosevelt Ward, Jr., 2309 Upperline Street, New Orleans, Louisiana. G-19 is a carbon copy of the letter from the U. S. District Attorney to the Special Agent in Charge of the F.B.I. in reference to Roosevelt Ward, Jr. 16-45-30-215.

Q. Will you just read that letter?

Objection: Mr. Coe:

I object to each and every one of these exhibits as irrelevant and immaterial.

The Court: Step up to the Bench.

(Counsel in conference with the Court).

The Court: The question, as I understand it, is withdrawn.

Mr. Baldwin: It is withdrawn, Your Honor.

Q. I ask you on exhibit G-5, which you have already
32 identified, to read instruction five contained thereon?

A. "After this questionnaire has been returned, report to your local board at once any change of address, any change in place of employment or occupation, or any other new fact which may affect your classification."

Offer: Mr. Baldwin:

In connection with the witness' testimony, the government would like to offer, introduce and file in evidence exhibit marked G-5.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Hands document to the jury).

Mr. Baldwin: We tender the witness, Your Honor.

Cross-Examination, by Mr. Coe.

Q. Let me get the sequence of events. This exhibit G-1 is the original registration card, dated I believe, September 18, 1948?

A. Yes, sir.

Q. From that you gentlemen gather, the Board gathered, I take it, that he was a resident of 2308 Upperline Avenue?

A. 2309 Upperline Street.

33 Q. And on that date in 1948 it shows the registrant was a student at Wilberforce University?

A. That's right.

Q. I assume you entered that on your record?

A. That's right.

Q. Then on March 21, 1950 you got a questionnaire which had been delivered to him and which was filled out. That questionnaire was addressed to 2309 Upperline Avenue, I believe?

A. That's right.

Q. That questionnaire shows his address as what, his living address at that time?

A. He said: "My address now is 72 W. 107 St., New York, New York."

Q. Do you have a place in the questionnaire for the name and address of the employer of the employee?

A. Yes, sir.

Q. Will you read what the name of his employer was, and the address?

A. "N. Y. Organizing Committee for a Labor Youth League, 799 Broadway, N. Y. C."

Q. So that it is true as of that date you were advised that he was no longer a student at Wilberforce University?

A. Yes, sir.

Q. I assume you entered that on your Board's records?

34 A. No, no place for it.

Q. That is in the questionnaire?

A. Yes, sir.

Q. Will you refer to your Regulation No. 1642; 41, Section-B?

A. Yes, sir.

Q. Will you read it?

A. "In endeavoring to locate and to secure the compliance of a delinquent prior to reporting him to the United States Attorney, the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address, as shown on Registration Card SS Form No. 41, or other person likely to know his whereabouts. The Local Board may enlist the aid of local and State authorities as deemed advisable. In no event shall the Local Board order or participate in the arrest of a delinquent."

Q. Do your records indicate that at any time the Local Board ever endeavored to communicate with his employer?

A. The only address shown on the registration card No. 1.

Q. I know you would endeavor to communicate with persons who would always know his address, but did you at any time communicate with the Labor Youth League, 799 Broadway, New York City, New York?

A. No, sir.

Q. Then as I understand it, the only efforts the Board

35 made to locate him was confined to his mother at 2309 Upperline Street?

A. No, sir.

Q. You endeavored to communicate with someone else?

A. Yes, sir.

Q. Approximately when was that?

A. I would have to refer to the communication.

Q. January 31, 1951?

A. It was sometime prior to that.

Q. You communicated with the College of Education and Industrial Arts, Wilberforce, Ohio. Tell us what date that was?

A. March 6, 1951.

Q. And you had in the record at that time the questionnaire indicating he was out of school and employed?

A. Yes, sir.

Q. Now you likewise communicated with—no, that is a reply.

A. That is a reply received from the College of Education and Industrial Arts in answer to another inquiry. As a matter of fact it is an answer to this carbon copy dated March 6, 1951.

Q. In 1951 you were communicating with the school to which he had gone in 1948?

A. We communicated with the school listed on his reg-
36 istration card at the time he registered.

Q. Yes. And you sent one of the communications to him which was returned January 15, 1951, to 72 W. 107th Street, New York. Is that correct?

A. That is correct.

Q. Had you at that time already been advised that that had ceased to be his correct address?

A. No, sir.

Q. That is the first time you learned that was not his correct address?

A. No, sir. We didn't know that was not his correct address until we were notified by the Post Office in New York.

Q. And that letter came back on what date?

A. January 15, 1951.

Q. And then on March 26, 1951 you forwarded the order to report for induction to the same address from which that had been returned?

A. That is correct.

Q. And on March 19, 1951 you forwarded another letter to 204 W. 149th Street, New York City, New York, which was likewise returned?

A. That is correct.

Q. And on no occassion did you forward a letter to 799 Broadway?

37 A. No, sir.

Mr. Coe: That is all.

Redirect Examination, by Mr. Baldwin.

Q. Why didn't the Board send a letter to 799 Broadway?

Objection: Mr. Coe:

We are not charging the Board with wrongdoing, we are charging the Board with the failure to do something.

Mr. Baldwin: I think it very pertinent. I will change the question.

Q. Will you refer to Regulation 1642.41, part-B, and read that regulation slowly?

A. "In endeavoring to locate and to secure the compliance of a delinquent prior to reporting him to the United States Attorney, the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address, as shown on Registration Form Card SS No. 41, or other persons likely to know his whereabouts. The Local Board may enlist the aid of local and State authorities as deemed advisable. In no event shall the Local Board order or participate in the arrest of a delinquent."

Q. Now, sir, on exhibit G-1, which is the registration card, does he have the address of his employer?

A. "Firm or individual by whom employed" he has
38 "Wilberforce University" and employed as a student.

Q. And you have already testified on cross-examination that you did attempt to contact the registrant at that address?

A. Yes, sir.

Q. Now from that registration card, what other names of people or addresses are given?

A. Under "Name and address of person who will always know your address," he has "Dorothy Ward, 2309 Upperline, New Orleans, Louisiana."

Q. And you have testified on cross-examination that you attempted to contact this registrant through that person?

A. That's right.

Q. Any other information contained thereon?

A. No, sir.

Q. I show you exhibit G-14 and ask you where that address came from? What is the address, first?

A. 204 W. 149 Street, New York City, New York.

Q. Where did that address come from?

A. Apparently from the person who would always know the registrant's whereabouts.

Q. And you contacted the registrant at that address as shown on that exhibit?

A. That's right.

Q. You testified previously that G-5 was a questionnaire,
39 and you stated its purpose at that time. Will you reiterate its purpose?

A. The purpose of the Selective Service questionnaire is primarily that the Local Board may properly classify the registrant.

Q. The information contained therein is for the Local Board to classify the registrant?

A. That is correct.

Mr. Baldwin: No further questions.

Recross-Examination, by Mr. Coe.

Q. As I understand the notation on the registration card, it is the duty of the registrant to report changes of address?

A. That is correct.

Q. Have you any other way of getting a change of address of an employer, other than the information you receive on the questionnaire?

A. Yes. The man can write in, or verbally.

Q. No requirement that he should do so?

A. Yes. In event a man changes his employment he should notify the Board.

Q. Will you show me the regulation requiring him to give a change of address of an employer? I understand he is obliged to, if he changes his own address.

A. If I may have one of those Selective Service cards.
40 (Card handed to witness). "To notify it of any fact which might change your classification." A change of employer would mean a change of classification.

Q. In other words, you are interpreting it that way?

A. That is correct.

Q. And the only place in which you can record new employment, is the statement of the registrant at the time of signing the questionnaire, what the questionnaire says it is?

A. No other information other than the information the man submitted at the time he submitted his questionnaire.

Q. So that to get the current employer's address, if there had been a change of employment since that original registration card, you would have to refer to that sheet?

A. Yes, sir.

Q. Apparently that was not done?

A. My own opinion, I believe the Local Board exceeded the requirements of the Regulation.

Mr. Coe: That is all.

Mr. Baldwin: That is all.

Anthony J. Maloney, Jr.: Witness, being duly sworn on behalf of the government, was examined and testified as follows:

41 *Direct Examination*, by Mr. Baldwin.

Q. Please state your name and occupation?

A. Anthony J. Maloney, Jr., Special Agent of the Federal Bureau of Investigation.

Q. Sir, do you know a person by the name of Roosevelt Ward, Jr.?

A. Yes, sir.

Q. Do you see that person in the Court?

A. Yes.

Q. Will you point him out?

A. The man in the brown suit.

The Court: Let the record show the witness points out Roosevelt Ward, Jr.

By Mr. Baldwin: Q. Under what circumstances, sir, did you come to know Mr. Ward?

A. Pursuant to a warrant of arrest issued in New Orleans, Louisiana for a violation of the Selective Service Act of 1948, I arrested Mr. Ward in New York City on May 31, 1951. Subsequent to the arrest of Mr. Ward, and at the office in New York of the F.B.I., I interviewed Mr. Ward. At that time he told me that he was born in Burnside, Louisiana, in 1930; that he was
42 raised in New Orleans, and that in 1948 while residing with his parents at 2309 Upperline Street, New Orleans, Louisiana, he registered with Local Draft Board No. 45 in New Orleans. He said that after he registered, he moved from New Orleans, Louisiana to New York City. He stated that he did not notify the Local Board of his change of address from New Orleans Louisiana, to New York City when he did move.

Objection: Mr. Coe:

This gentleman is charged with the failure to notify his Local Draft Board of his change of address from New Orleans, Louisiana to New York City specifically between the thirtieth day of March and the first of June, 1951. I realize a slight error might be made, but I don't think they can go beyond the indictment.

The Court: One of the basic elements of this offense is knowledge, and evidence may be obtained which may not come within the dates specified in the indictment but may have very great relevancy on the question. On that basis I overrule the objection.

Mr. Coe: Exception.

A. Mr. Ward stated when he moved to New York City he took up residence with his aunt, Vivian Short, 204 West 149th Street.

He further advised me that sometime in 1949 after
43 receiving a Selective Service System questionnaire from his mother in New Orleans, which reached him at the home of Mrs. Vivian Short, he filled out his questionnaire and returned it to his Local Board in New Orleans. He further testified that sometime in 1949, due to crowded conditions in the apartment of Mrs. Short, he moved from the apartment at 204 West 149th Street to 206 West 149th Street. He could not be sure which address it was, but recalls it was the house next to the building where Mrs. Short lived. He further advised that since 1949 he has moved on several occasions, and at no time did he notify his local Draft Board of his change of address. He stated that he felt at all times—

Objection: Mr. Coe:

Same objection, and move to strike the statement "at no time did he notify his local draft Board of his change of address".

The Court: Same ruling.

A. (Witness continuing). He stated that at no time did he notify the Board of his change of address, feeling that the local Draft Board could contact him through his aunt, Mrs. Vivian Short, and at any time they wanted to contact him they could reach him through his aunt. I might add he stated that he filled out a
44 quesionnaire in 1949, which furnished the Board with the address of Mrs. Short as his current address. He admitted that he did not notify the Board of his change of address when he moved subsequent to 1949, but he notified the Draft Board of his address at 680 St. Nicholas Avenue.

Q. What was the date of the arrest, Mr. Maloney?

A. May 31, 1951.

Q. And at that time Mr. Ward gave his address as what?

A. 680 St. Nicholas Avenue.

Mr. Baldwin: We tender the witness.

Cross-Examination, by Mr. Coe.

Q. Do you by chance remember at what place you arrested Mr. Ward?

A. Yes, sir.

Q. Where was that?

A. 799 Broadway, New York City.

Q. That, I take it, is the office of the Labor Youth League?

A. That's right.

Q. Did you have any difficulty finding him there?

A. No, sir.

Q. You just went down there and arrested him?

A. Yes, sir.

45 Mr. Coe: That is all.

Mr. Baldwin: The government rests, Your Honor.

(Five minutes recess).

The Court: Will Counsel step up to the Bench?

(Counsel in conference with the Court).

Testimony on Behalf of the Defendant

Roosevelt Ward, Jr.: Witness in his own behalf, was examined and testified as follows:

Direct Examination, by Mr. Jones.

Q. Please state your name?

A. Roosevelt Ward, Jr.

Q. Now, Mr. Ward, what is your occupation?

A. I am Administrative Secretary of the Labor Youth League of New York City.

Q. Where does the Labor Youth League maintain its office?

A. 799 Broadway, New York City.

Q. How long had you been employed by the Labor Youth League?

A. From 1949 until I was arrested.

Q. At the time that you returned the completed ques-
46 tionnaire to the Draft Board, did you furnish the Draft Board with your address?

A. Yes.

Q. What address?

A. New York Organizing Committee for the Labor Youth League, 799 Broadway, New York City.

Q. Mr. Ward, where were you in the habit of having your mail addressed to you?

Objection: Mr. Baldwin:

I am going to object to that as immaterial. This defendant is charged with not giving his address during a particular time. It is a self-serving declaration.

Mr. Jones: We believe it is relevant for the reason one of the counts the defendant relies on, is that he did not furnish them with the residential address to which he moved, for the reason he relied on the fact that he could be contacted at his business address, and we are in position to show that he did in fact give them his business address and could have been contacted there by the Draft Board.

The Court: I overrule the objection.

By Mr. Jones: Q. I will repeat the question. What address were you in the habit of having your mail addressed to?

47 A. 799 Broadway.

Q. I show you these envelopes marked D-1 for the purpose of identification and ask you if you can identify them?

A. They are all letters that I received at 799 Broadway, addressed to me.

Offer: Mr. Jones:

In connection with the witness' testimony, we should like to introduce into evidence the envelopes marked D-1.

Mr. Baldwin: No objection.

The Court: Let them be admitted.

(Documents handed to the jury).

By Mr. Jones: Q. At the time that you first left New Orleans and went to New York, at what address did you reside?

A. I first lived at 204 W. 149th Street.

Q. Did you at any time receive any mail addressed to you there?

A. Yes, I did.

Q. I show you envelope marked D-2 for the purpose of identification and ask you if you can identify that envelope?

A. Yes, sir. This is a letter I received at 204 West 149th Street, New York City.

Offer: Mr. Jones:

48 In connection with the testimony of the witness I would like to introduce in evidence the exhibit marked D-2.

The Court: Let it be admitted.

(Hands document to jury).

By Mr. Jones: Q. Now Mr. Ward, did you at any time receive an induction order from Local Board No. 45 addressed to you at 799 Broadway, or at any other address?

A. No, I did not.

Q. Did you at any time have knowledge from any other source that such an order had been issued?

A. No, I did not.

Q. Now Mr. Ward, had you received such an order, that is, an order to report for induction, would you have complied?

A. I would have immediately complied.

Q. If given the opportunity to comply, would you be willing now to enter into the performance of your duty?

Objection: Mr. Baldwin:

I object as irrelevant and immaterial.

The Court: Sustained.

By Mr. Jones: Q. Have you at any time since your release from custody presented yourself at the Office of the Draft Board
49 and made an effort to become inducted into the Service?

Objection: Mr. Baldwin:

I object on the same grounds, irrelevant and immaterial, Your Honor.

Mr. Jones: We take the position, and it has been decided that the intent of the registrant to report after the date he had been ordered to report is a material fact in determining whether he attempted to evade the performance of his duty, and we feel for this reason this evidence is relevant.

Mr. Baldwin: The government still takes the position this defendant having failed to report for induction, there is no question before this Court whether this defendant is now willing to go into the service. It is irrelevant and immaterial.

The Court: If this defendant made an offer after he was apprehended by the Federal Bureau of Investigation it would seem to have no probative value.

Mr. Baldwin: Might to the weight, but I don't think to the admissibility.

The Court: I sustain the objection.

50 Mr. Jones: I tender the witness.

Cross Examination, by Mr. Baldwin:

Q. Mr. Ward, when you first went to New York City what was your address?

A. 204 West 149th Street.

Q. Did you report that address to your Draft Board?

A. I did not report it because I was only there for a while and I didn't know whether I would stay there permanently. I was living there temporarily.

Q. And you did not report it?

A. No.

Q. Your family knew where you were going?

A. Yes.

Q. Your mother knew where you were going?

A. My mother knew and my father knew.

Q. Everybody knew you were going to 204 West 149th Street?

A. Until I found other residence.

Q. Did you contact your mother after you found other residence?

A. Immediately after I found other residence?

Q. At any time.
A. Sure.
Q. And you told her where you were?
51 A. Yes.
Q. Did you hear from your mother during that time?
A. Yes. I heard from my mother at 204 West 149th Street.
Q. I show you exhibit G-13. Will you read that?
A. "In reply to your letter about Roosevelt Ward, Jr. I haven't heard from him and don't know where he is located. His last address that I know was 204 W. 149, New York City. Since then I haven't heard from him."
Q. What is the date of that letter?
A. January 31, 1951.
Q. Who signed that?
A. Mrs. Dorothy Ward.
Q. Who is Mrs. Dorothy Ward?
A. My mother.
Q. Didn't you give the name of Mrs. Dorothy Ward as the person who would always know your whereabouts?
A. I did.
Q. Did you ever notify the Board that Mrs. Dorothy Ward would not know of your whereabouts?
A. No, I didn't because she always did know my whereabouts.
Q. Let's try to go back over this. You went to New York. You lived at 204 West 149th Street?
A. That's right.
Q. You didn't notify the Board of that?
A. I didn't notify the Board. I lived there temporarily.
52 Q. About how long did you live there?
A. Approximately two months.
Q. And you did not notify the Board of that address?
A. No.
Q. Where did you go from there?
A. Seventh Avenue, New York City.
Q. Did you notify the Board that you had moved to Seventh Avenue?
A. No.
Q. Did you notify your mother that you had moved to Seventh Avenue?
A. Yes.
Q. When did you go to Seventh Avenue?
A. In 1949.
Q. And you notified your mother?
A. Yes.
Q. Where did you go after that?
A. You mean where did I move to?

Q. Where did you move to.

A. My next address was 72 West 107th Street.

Q. Did you notify the Board of that address?

A. On the questionnaire that is the address I notified them of.

Q. Did you notify your mother that you were living there?

A. Yes. My mother knew I was there.

53 Q. You realize that this letter I just showed you is dated January 31, 1951?

A. Yes, 1951.

Q. Written by your mother?

A. Yes.

Q. What address did your mother refer to as your last known address?

A. 204 West 149th Street.

Q. When you say you gave your mother the address 72—

A. I didn't give her the address. She knew I was living there.

Q. How did she know that?

A. How did she know? Because I was living there at the time of a visit from my father.

Q. What was the circumstance of the visit?

A. The circumstance of the visit of my father?

Q. Yes.

A. He came to New York after he received the questionnaire which they sent to 2309 Upperline Street, and being it was only ten days to return the questionnaire, he felt he would try to get there and be there when I received the questionnaire in case I had not visited my aunt within the ten days, so he would attempt to find me.

Q. Your father came up there with the questionnaire?

A. No, he didn't. The questionnaire was sent directly

54 to my aunt.

Q. Why didn't your father call you? What was the necessity for him to come up there?

A. I can't speak for my father's motives. All I know is he came.

Q. Isn't it a fact your father didn't know where you were when he came to New York?

A. Yes. I said after he got there my father did locate me when I went to my aunt's house.

Q. But he didn't know where you were when he went up there?

A. He didn't know my exact address. He contacted me through my aunt.

Q. He knew you were in New York?

A. Yes.

Q. When did you move to St. Nicholas Avenue?

A. I moved there in April because of some housing problems in New York.

Q. Did you notify your Draft Board of that address?

A. No, because the Draft Board was acquainted with my employer's address, and I didn't know if I would stay there, because I was living in a room.

Q. In other words, you take the position if you were going to be in the place two months it was not necessary to comply with the requirements of the Board and notify them of your change of address?

55 A. No, I didn't take that position. I felt they could always contact me at the address of my employer.

Q. You are aware of the regulation which requires you to furnish any change of address?

A. Yes.

Q. And you furnished the Board with only one change of address all the time you were in New York?

A. That's right, except the address that never changed, which was my job.

Q. You know the purpose of a questionnaire?

A. I think I know.

Q. What is your opinion of the questionnaire?

A. Well, the Selective Service Act is the law of the United States, and under that Act all young people between certain ages are required to present themselves for service in the Armed Forces. Now the questionnaire is only to mail certain facts in order to identify that person and to be able to locate him when it is necessary.

Q. Such as finding out his employment. That has a great deal to do with a person's classification?

A. I don't know about that—the Draft Board does the classifying.

Q. That's right, the members do that?

A. I don't know. I know that the Selective Service Board receives the mail. I am not acquainted with all the specifications about how they classify them and so forth.

56 Q. But you do realize that a questionnaire is for the purpose of the Board to consider and classify a registrant?

A. Yes, the Board.

Q. And whatever information is contained in there, the Board considers it in classifying a registrant?

A. Yes, and also informing him of that classification, and also learning his whereabouts and so forth. I don't think they just notify him and forget about the questionnaire, but the information contained in that questionnaire is used in order to reach the person, and so forth.

Q. Are you familiar enough with the law to state that? You just stated you knew enough to know you had to furnish the Board with your change of address?

A. I did inform them of my address.

Q. You feel that by filling out something that had to do with your classification, that you complied with the address requirements of the Selective Service Act?

A. Yes. That address was sufficient for me to give them the information, that the Selective Service Board would always have.

Q. You now feel that the Board, every time they wanted to contact you, would go through every paper and questionnaire which has to do with classification?

A. No. If I had been certain as to where I would be
57 living for an extended period of time, I would have informed them of my permanent address, but on the questionnaire the addresses that were given—there were two addresses which I gave, one of which remained permanent as of the time they arrested me.

Q. You see, I am having a hard time. You have testified that the questionnaire is for classification purposes?

A. I don't know the full extent of the questionnaire, what it is for besides qualification, but any young person who receives a questionnaire relies upon that questionnaire for his classification and anything else that comes about. If in the period of time the information contained in that questionnaire does not change, the place of employment never changed, I rely upon that fact.

Q. Didn't your place of employment change from the time that you registered? When you registered, where was your place of employment?

A. I was out of work.

Q. But you gave the place of employment on your registration card?

A. Place of employment?

Q. Would you read line-10?

A. "Place of Employment or Business, Wilberforce, Ohio." On this form, I don't know in relation to how the question of your going to school could be considered employment or not.
58 I attended Wilberforce University.

Q. And you gave that place as your place of employment?

A. I didn't write that form out there myself. I don't recall.

Q. Maybe that's wrong?

A. I don't know. I am not saying its wrong. I attended Wilberforce University and I gave that information.

Q. Did you sign that card?

A. I don't know. I didn't look at it that well.

Q. Try again?

A. Yes, I signed it, and nothing is incorrect in it.

Q. Then line-10 is correct, your place of employment, Wilberforce, Ohio?

A. Yes.

Q. Did your place of employment change?

A. That's right.

Q. You gave that change in your questionnaire?

A. That's right.

Q. And yet you figured that was sufficient?

A. That's right.

Q. You figured that the Board would still contact you at the other place?

A. What other place?

Q. The first employment you gave in your questionnaire.

A. I registered in 1948, and a year or two later I sent
59 them something which showed that my place of employment had changed, I think that last information I gave the Board would supersede any information I gave them at the beginning.

Q. That is not exactly what is required of you. You are required to give a change of address.

Mr. Coe: I think this is generating into an argument with the witness.

The Court: You are arguing with the witness. Let's get the facts you want from him.

By Mr. Baldwin: Q. Who is Vivian Short? A. Mrs. Vivian Short is my aunt.

Q. And where does she live now?

A. 204 West 149th Street, apartment six. She lives there now and lived there before.

Q. In other words, mail sent to you there would have reached you?

A. Yes, reached me.

Q. Did you ever give that address to the Local Board?

A. The Local Board received that address.

Q. Now wait a minute. How do you know that the Local Board received that address?

A. Because I received mail there at that address.

60 Q. Now you knew that mail was being delivered to you at that address?

A. Yes.

Q. Did you ever give that address to the Local Board?

A. They had the address.

Q. Did you ever go back to that address and try to get your mail?

A. That's right, continued over the past number of years.

Q. And you never got anything else that was addressed to you?

A. Yes, and my aunt will testify to that fact.
Q. What is the postmark on this envelope?
A. October 10, 1949.
Q. What address is on there?
A. 204 West 149th Street.
Q. Ever get any mail there since this?
A. Yes, I received mail there.
Q. You never received anything addressed to you from the Draft Board?
A. Never received anything at that address.
Q. Looking at G-14 addressed to you, what does that state?
A. "Not at address given."
Q. And yet you tell me you have been receiving mail there right along?
A. That's right.
61 Q. And the Post Office Department just picked this out and said you were not there?
A. I can't testify for the Post Office. I received mail at that address. I had other letters which showed that I received mail there. I have never seen this letter before. Now I don't know what happened. That letter may have the address, or maybe it wasn't sufficient. I don't know the reason, but I don't know anything about that letter, because I never received it.
Q. Why, if you were receiving mail at 204 West 149th Street, did you then expect the Board to deliver your mail to your place of employment as requested in your questionnaire?
A. Because the Board—in any event that letter did not reach me. That is the address that remained permanent, that I was certain of, and never changed.
Q. You knew your Local Board was dealing with you at 204 West 149th Street?
A. After I gave them an address at 72 West 107th Street, that was after I had received mail at 204. Then that became for the time a permanent place of residence, until unfortunately certain conditions caused it to be changed. Then the address I relied upon was the place of busines, because since I have received mail at another place of residence, other than 204, since the last time they had contacted me there, I relied on that business ad-
62 dress as always the place where I could be reached.
Q. Did you ever ask your aunt to keep your mail for you?
A. That's right.
Q. Did you ever speak to the boss man?
A. No, I never did.
Q. From all of these places where you received mail, did you ever leave a forwarding address?

A. Did I leave a forwarding address?
Q. Yes.
A. I don't recall.
Q. You gave the address 72 107th Street in your questionnaire?
A. Yes.
Q. You knew the Draft Board had that address when you left there?
A. That's right.
Q. Did you leave a forwarding address?
A. No, because the place I moved to I didn't know how long I would be there, and I once again relied on the fact they had the address of my place of employment where I could be reached at that time.
Q. Did you know that under the law you are required to give your current address to the Board?
A. Did I know?

Q. That under the Selective Service law you were re
63 quired to give your current address to the Local Board?
A. My current address?

Q. Did you know that under the Selective Service law you were required to give your current address to your Local Draft Board?
A. Yes.
Q. Did you feel that after a certain lapse of time and you hadn't heard anything from your Draft Board, did you think anything was strange?
A. I didn't know.
Q. You had received a 1-A classification, had you not?
A. I had.
Q. When did you receive it?
A. I don't recall the exact time.
Q. Did you have it on you?
A. No, I didn't. I had the classification on me which I gave to my attorney.
Q. What is the address thereon?
A. Where this was received? (Indicating).
Q. Yes.
A. 72 West 107th Street.
Q. And what is the postmark on there?
A. April 28, 1950.
Q. And that reflects your classification to be what?
A. 1-A.

64 Q. When were you arrested?
A. May 31, 1951.

Q. And you had not heard from your Board in over a year after being classified 1-A?
A. That's right.

Q. And you were not worried?

A. I felt it was up to the discretion of the Local Board to contact me when they felt.

Mr. Baldwin: No further questions.

Redirect Examination, by Mr. Jones:

Q. You have just testified that you supplied your Local Board with the address of your employer?

A. Yes.

Q. And you felt that you could have been contacted there?

A. Yes.

Q. What else, if anything, did you rely upon in feeling that the Draft Board could have contacted you at 709 Broadway?

Objection: Mr. Baldwin:

I object.

The Court: On what ground?

Mr. Baldwin: It has no bearing. He has already testi-
65 fied as to the address where he could always be located.

Mr. Jones: I think the defendant had reason to believe he could be contacted where he was employed, and he testified he relied upon that fact.

The Court: I overrule the objection.

A. I relied upon one other fact, that my roommate I lived with in New York for the past two years who was registered at a New York address, being forced to move at the same time I was, we roomed together, the Draft Board not being able to contact him at his residence, sent him a letter at his work, and I felt that was further proof of the fact that my employer's address was sufficient for them to reach me, and he received that communication at his place of employment.

Q. Did the fact of your roommate receiving this letter, lead you to believe that this was the policy of the Board, where it was unable to contact a person at some other address?

A. It did lead me to think that.

Q. Mr. Ward, the envelopes that we showed you and had you identify, do they constitute all of your mail sent to you at that address?

A. No, only a small portion of the mail.

Q. In other words, there was other mail addressed to you
66 at this place?

A. That's right.

Mr. Jones: That is all.

Recross Examination, by Mr. Baldwin:

Q. Who was your roommate?

A. Roosevelt Jackson.

Q. You relied upon the fact that his Draft Board had contacted him at his place of employment?

A. Yes, Sir, one factor that made me more confident.

Q. Do you know where the Draft Board got that address?

A. I don't know.

Q. It might have been on his registration card?

A. I don't know.

Q. At the time you registered were you going to college?

A. No, I was not.

Q. In line ten you gave your place of employment as Wilberforce University?

A. I had gone there.

Q. And yet you expected the Board to contact you at the place of employment you now have—

A. I included all the information on the questionnaire that brought me up to date. The questionnaire was much more up-to-
date than the registration card, and I relied upon that
67 questionnaire. I gave my place of employment on that questionnaire.

Q. At the time you registered, you gave the firm or individual by whom employed as Wilberforce University. Were you employed or going to school there?

A. I had gone to school there. I wasn't there at the time.

Q. Did you expect the Board to contact you there?

A. No, not at that time, no.

Q. But you now expect the Board to contact you at a place—

Objection: Mr. Jones:

I object. I think we are getting into argument.

Mr. Baldwin: No further questions.

By Mr. Jones: Q. I would like to show you this registration card marked G-1 and ask you whether or not you recognize this as the card you filled out when you registered?

A. My name is affixed to it, so that—

Q. Do you recognize the information thereon as the information you supplied to the Board at the time you registered?

A. I recognize some of the information I supplied.

Q. I would like you to read questions seven and eight and the answers indicated thereon?

A. "Occupation, Student. Firm or individual by whom employed. Wilberforce University."

68 Q. At the time that you registered you gave the information that you were a student at Wilberforce University. Did you give the information with the view that Wilberforce University was your employer, or the university you had attended as a student?

A. I gave it as the university I had attended as a student.

Mr. Jones: No further questions.

By Mr. Baldwin: Q. You read that card at the time you signed it?

A. Did I read it?

Q. Yes.

A. I must have read it, but I didn't fill that card out. I signed it.

Mr. Baldwin: No further questions.

By the Court: Q. Did you have any trouble receiving any other mail during this period at any place?

A. No, no trouble receiving any other mail that I know of, Your Honor.

Q. In other words, the only mail you had any trouble in receiving during this period was this mail from the Selective Service Board?

69 A. I don't know that that was the only mail that I did not receive.

Q. As far as you know it was the only mail?

A. As far as I know it was the only mail.

Q. Can you tell this jury any reason why your mother could not help this Board to contact you during this period?

A. I maintained contact with my mother through the address at my aunt. That was the place from which I wrote, and so forth. I had always kept in touch with my mother on birthday occasions, and so forth. I don't know, I mean it is hard for me to speculate as to the reason why my mother was not able to fully help the Board, but I imagine that it would have been because she was excited to an extent that I was brought—I mean that there was trouble involved, and consequently might not have taken all of the possible means to help contact me.

Mr. Baldwin: At this time it is quite evident from the evidence offered the government is unable to prove this defendant did in fact receive, or had orders to report for induction, therefore at this time the government asks, with leave of the Court, to nolle prosequi count one of the indictment.

The Court: As I understand it, the government is abandoning count one which relates to unlawfully and knowingly failing to comply with an order to report for induction, and the government is now standing on count two which alleges that he know-

70 ingly failed to furnish said Local Board with his correct address where United States mail might reach him. Is that the government's position?

Mr. Baldwin: That is the government's position.

The Court: It is so ordered.

Mr. Baldwin: The government rests, Your Honor.

Mr. Coe: The defense rests.

The Court: Court will stand at recess until two o'clock.

2:00 P. M. After Recess:

Mr. Coe: The defense has a motion it wishes to present. (Hands document to the Court).

The Court: Let the jury retire. (Jury retired).

(Argument by Mr. Coe on motion for failure of the defendant to notify the Board of change of address).

The Court: I understand your motion. As I said before, one of the primary responsibilities of the government in this case
71 is to prove knowledge that this defendant failed to obey the duties required of him. All of the evidence has been introduced to which objection is now being made bearing on the question of knowledge, and for that reason I deny the motion made by Counsel.

Mr. Coe: Now if the Court please, I would like to submit my motion for judgment of acquittal.

(Argument on motion).

The Court: On the basis of the evidence I think it is a jury question as to whether or not mail from the Selective Service Draft Board No. 45 would have reached this defendant anywhere. He supplied the Draft Board with several addresses, including the address of the person who would always know where he was, but in spite of the Draft Board's efforts no success was achieved in locating this man through the addresses given. The question of whether or not he could have been located at some other address is a question that the jury might decide in the light of all the evidence. I say further, and again, that this jury may very well decide that this defendant did not want to receive any mail from his Draft Board, in spite of the fact he received other mail at various places, including the place where mail was addressed to him by the Draft Board. He says nothing was received
72 from the Draft Board. I think it is a jury question on the second count. I overrule the motion. Call the jury.

(Jury returned to the Court).

IN UNITED STATES DISTRICT COURT

Judge's Charge

Ladies and Gentlemen:

You have heard the evidence and the argument of counsel and it now becomes my duty to give you the law governing this case. It is your duty to accept the law as it is given to you by the Court and to determine the facts of the case for yourselves. The proper application of the law of the case to the facts of the case, as you find them, determines your verdict. I wish to make it very plain to you, that the sole responsibility and the sole power in determining the facts are with you, and anything that I may say, or seem to say, as indicating any view or opinion on the facts can only be advisory to you.

Now, there are some general principles of law which are of importance in every criminal case, and I wish first to make some statements that apply to criminal cases in general; after which I shall endeavor to make clear to you what this particular case involves.

It is a well recognized principle in law that every person who is charged with the commission of a violation of the law is
73 presumed to be innocent, and the burden rests on the government to establish to your satisfaction beyond any reasonable doubt that the party is guilty as charged. This presumption of innocence remains with the defendant all through the case until it is overborne by proof which satisfies you beyond any reasonable doubt that the presumption of innocence no longer remains with him. So you must look to all the evidence introduced in this case, and ask yourselves whether or not you are satisfied beyond any reasonable doubt that the offense has been committed as charged in the indictment. If you are so satisfied, then it will be your duty to convict the defendant. But if there exists in your mind a reasonable doubt of his guilt you must then give him the benefit of that doubt and acquit him. So that if there are two reasonable theories, equally supported by the evidence, one of which is consistent with the guilt of the defendant and the other consistent with his innocence, then you must adopt that theory consistent with innocence and acquit him, because he could not be said to be guilty beyond a reasonable doubt.

Now the term "reasonable doubt" as used in this charge does not mean just any possible doubt you might have, but it means such reasonable doubt as a careful, prudent and reasonable man ought to entertain in the circumstances proven. It means a doubt based on reason, and which is reasonable in view of all the
74 evidence. It does not mean a vain, fanciful or whimsical

doubt, nor does it mean a possible doubt created by the reluctance on the part of a jury to perform an unpleasant task. It means a doubt arising out of the evidence that is based upon substantial grounds and one is said to be convicted in a case of this kind beyond a reasonable doubt, when, after an impartial comparison and consideration of all the evidence, you can conscientiously say that you feel an abiding conviction to a moral certainty of the truth of the charge. If there is a reasonable doubt in your mind about the guilt of the defendant on a charge in the indictment, he is entitled to the benefit of such reasonable doubt and to acquittal on that charge. If, on the other hand, you think his guilt is clear beyond a reasonable doubt, then you are authorized to find him guilty on that charge.

Now the machinery of a trial calls for the exercise of varying functions by Counsel, by the witnesses who testify, by the Court that presides and by the jury. You, as the jury, exercise two important and exclusive functions.

First, you are the sole judges of the facts. That is to say, it is you who must consider the evidence, weigh the evidence, and draw the inferences from the evidence, and only from the evidence.

Secondly, you exercise the exclusive function of passing
75 upon the credibility of the witnesses. You can see that this is a very important function, because to determine where the truth lies you must of necessity decide who is telling the truth. How you are to do that is left to your own determination. Ordinarily, in the usual walks of life we employ tests such as these: What is the consistency of the story told? Are there important contradictions? What is the demeanor of the witness who tells the story? Is he evasive, or does he give his answer directly—indicating truth? Does he have an interest in the case? These tests you doubtless will apply, though you are not compelled to do so. You will exercise in the last analysis your own common sense.

If conflicts in the testimony exist, it is your duty to reconcile them without imputing perjury to anyone, if you can reasonably do so; but if you find that a witness has wilfully and falsely testified on a material matter, you should, of course, disregard that false testimony and you may if you choose disregard any and all testimony given by such witness. The credibility of the witnesses and the weight of their evidence are solely matters for your determination. You are exclusively the judges in determining where truth lies.

So now we come to the proposition that in entering upon the
final stage of the case your responsibility is to take the evi-
76 dence, weigh it, and render a just verdict between the gov-

ernment of the United States and this defendant. This brings us directly to the charges themselves.

The indictment is a mere accusation and not evidence against the accused. Count one has been abandoned by the government and the jury will not consider count one. Count two charges that the defendant, a registrant of Selective Service Board No. 45, did unlawfully and knowingly fail to furnish said local board his correct address where United States mail might be delivered to him, as required by law.

Now the particular statute with reference to this charge is Section 12 of the Selective Service Act of 1948 which to the extent here pertinent provides that any person "who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title, shall, upon conviction be punished," and here follows the penalty with which the jury is not concerned.

As set forth above the indictment charges the defendant with the failure to perform a certain duty imposed upon him by the regulations promulgated under the Selective Service Act of 1948. The applicable regulation, which is binding on the defendant only to the extent that he may know about is 1641.3. Section 1641.3 to the extent here pertinent provides as follows:

77 "It shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him. The mailing of any order, notice, or blank form by the local board to a registrant at the address last reported by him to the local board shall constitute notice to him of the contents of the communication, whether he actually receives it or not."

From the foregoing it is apparent and the Court accordingly instructs the jury that the Act does not denounce as criminal, every failure to perform a duty imposed by the statute or regulations, but only seeks to punish a person "who shall knowingly fail or neglect" his duty. There must be a specific wrongful intent. An actual knowledge of the existence of an obligation and a wrongful intent to evade it is of the essence. Before this defendant can be found guilty this jury must be convinced beyond a reasonable doubt not only that he has failed to keep his board advised of the address where mail would reach him but also that he knowingly failed to do so. Unless the element of knowledge on the part of the defendant is found by you as a fact to have existed, or if you have a reasonable doubt of its existence, it will be your duty to acquit the defendant. The intent and motives of the defendant are the most important factors in this case.

Now in weighing the evidence in this case, you should
78 consider the circumstantial as well as the direct testimony, for frequently, it is not possible to prove facts by direct testimony. This is especially true when knowledge, motive, intent or purpose is one of the facts to be proved, so that circumstantial evidence is often of necessity resorted to in order to ascertain the truth. Now knowledge, motive, intent or purpose has to be deducted from the circumstances, unless a person admits such things. Their existence can only be established by proving the circumstances of the transaction. You cannot look into a man's mind and see what he knows or what his purpose, motive and intentions are. You must necessarily look to the surrounding circumstances to determine these things. Now as to the question of knowledge or lack of knowledge, it is proper to look at the circumstances as they existed at the time the transactions took place, and if anything wrong was being done, wrongs charged in the indictment, you will then look to see whether or not the defendant knew of the circumstances and whether or not he intended to do those wrongs.

Take all the circumstances proved in connection with defendant's activities and make up your mind whether or not he knowingly failed and neglected to perform the duty required of him under the Act or Regulations. Before you can convict the defendant you must find from the evidence beyond a reason-
79 able doubt that he had both knowledge of, and a specific intent to commit the offense charged.

In this case you will consider both the direct and circumstantial evidence introduced.

In weighing the circumstantial evidence in the case, you want to keep your minds clear and consider what is actually proved in the way of circumstances, what is known to be true. If the circumstances proved point with certainty to a conclusion, if they exclude every reasonable doubt from your minds, every reasonable hypothesis other than that of guilt, then circumstantial evidence is sufficient to convict a person of crime. If, however, the evidence and circumstances as a whole are such that they leave you uncertain as to whether guilt is or is not shown by them and there is such uncertainty that you feel that doubt to be reasonable, then, of course, acquittal will follow under the rule I have already given you to the effect that a defendant must be proved guilty beyond a reasonable doubt before he can be convicted.

Now Counsel for the defendant has requested special charges.

Request number one relates to count one, which has been abandoned and consequently will not be given.

Request number two will be given.

The Court charges you that under the second count it is charged that the defendant did unlawfully and knowingly

80 fail to furnish his Local Board with his correct address where United States mail might be delivered to him; and if you find from the evidence that the defendant furnished to said Board one or more of his correct addresses at which mail would be delivered to him, he is not guilty, and you must find a verdict of acquittal.

Requested charge number three is denied.

Finally and in conclusion let me say that it is your duty to weigh the evidence carefully, dispassionately, calmly, and to reach a conclusion about the case as to the facts, which are wholly within your findings. The sole and only question for your consideration is whether the defendant is guilty of the offense for which he is on trial. If you are satisfied beyond a reasonable doubt that he is guilty, it is your plain duty to convict him. If you have a reasonable doubt about the matter it will be equally your duty to acquit.

Now all twelve of you must agree, whichever way you find; in other words, your verdict must be unanimous.

If you find the defendant guilty, the form of your verdict should be: "We, the jury, find the defendant guilty as charged."

If you find the defendant not guilty, the form of your verdict should be, "We, the jury, find the defendant not guilty."

81 Upon retiring you will select your own foreman and your verdict will be endorsed on the indictment and dated and signed by the foreman whom you select.

Any exceptions to the charge by the government?

Mr. Baldwin: No, Your Honor.

The Court: Any exceptions to the charge by the defense?

Mr. Coe: I except to the refusal to give charge number three, also to your charge that "The intent and motives of this defendant are the most important factors in this case."

The Court: The exceptions taken by Counsel are matters which direct themselves to the Court. They are matters with which the jury is not concerned. You may now retire.

(Jury retired at 3:15 p.m.)

(Jury returns at 3:30 p.m.)

A Juror: We would like to ask a question.

The Court: State your question, please.

A Juror: The charge says between the dates of March 30,
82 1951 and May 31, 1951, if he failed to notify the draft board at any other time except between those dates.

The Court: May I have that again, please?

The Juror: Does the law say he has to notify the Draft Board between those dates, or notify the Draft Board every time he moves?

The Court: In answer to the first part of the question it was not necessary that he notify the Draft Board between those particular dates.

The Juror: It was not necessary?

The Court: Between those particular dates, March 30, 1951 and May 31, 1951. Does that answer your question?

The Juror: Yes, sir.

The Court: Let the jury retire.

(Jury retired at 3:45 p.m.)

(Jury returns at 4:00 p.m. with guilty verdict).

Mr. Coe: If the Court please, we would like to have the
83 jury polled. (Jury polled).

The Court: Is the defendant ready for sentence?

Mr. Coe: Yes, sir.

The Court: It is ordered and adjudged the defendant having been found guilty he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years.

Mr. Coe: I would like to give notice of appeal and request the Court to grant a writ of supersedeas and fix the bail bond.

Mr. Baldwin: At this time the government requests that bail be set at $20,000.00. There is information now in the file, and this defendant has admitted on the stand that he belongs to the National Youth League, and there is information in our files also from the F.B.I. that this defendant is under surveillance by them.

Mr. Coe: I respectfully submit to the Court the fact that this defendant may be viewed by the government for some immaterial fact known to the government, there is no proceeding
84 or indication here to that effect, and whatever may be the opinion of the jury, it is not an aggravated case to lead people to think he was a man of bad motives and evil inclinations. I respectfully submit to the Court there is no evidence to justify such an exorbitant bond.

The Court: A man has no Constitutional right to bail pending appeal, as I understand the law. I will set the bond as requested by the government at $20,000.00 until the Court can get the report from the Federal Bureau of Investigation as to the background of this man.

Mr. Coe: We will proceed with the appeal as soon as we can file our papers.

IN UNITED STATES DISTRICT COURT

Notice of Appeal—Filed September 11, 1951

Name and address of Appellant: Roosevelt Ward, Jr., 2309 Upperline Street, New Orleans, La.

Names and addresses of Appellant's Attorneys: Alvin B. Jones, 503½ South Rampart Street, New Orleans, Louisiana. John M. Coe, Bell Bldg., Pensacola, Florida.

Offense: Failing to furnish current address to Selective Service Board in violation of Title 50 App. Sec. 462 U. S. Code, being a part of the Selective Service Act of 1948.

85 *Concise statement of judgment or order giving dates and any sentence:* Appellant was adjudged guilty of offense above named on Sept. 10th, 1951 and sentenced to custody of Attorney General of U. S. for imprisonment for the term of 3 years.

Name of Institution where now confined: Parish Prison of Orleans Parish, Louisiana.

I, the above named appellant hereby appeal to the United States Court of Appeals for the 5th Circuit from the above stated judgment.

Dated: Sept. 11th, 1951.

(Signed) ALVIN B. JONES
(Signed) JOHN M. COE
Attorneys for Appellant.

Received a copy of the within notice of appeal this Sept. 11th, A. D. 1951.

(Sgd) RICHARD C. BALDWIN
Asst. United States Attorney for the Eastern District of Louisiana.

Designation of Contents of Record—Filed September 11, 1951

(Omitted in printing)

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86 IN UNITED STATES DISTRICT COURT

Statement of Points—Filed September 11, 1951

In accordance with the provisions of Rule No. 75 (d) Defendant files the following statement of points:

(1) That the court erred in overruling Defendant's motion for judgment of acquittal.

(2) That the court erred in overruling Defendant's motion to strike testimony of failures to furnish Local Board information of changes of address outside of the period of time covered by the indictment.

87 (3) That the court erred in overruling Defendant's motion to strike testimony of the sending and non-receipt of communications outside of the period covered by the indictment.

(4) That the court erred in refusing to give Defendant's requested charge No. 3.

(5) That the court erred in charging the jury that "the intent and motive of this Defendant are the most important factors in this case."

(Sgd) ALVIN B. JONES
(Sgd) JOHN M. COE
Attorneys for Defendant
(Appellant).

Received a copy of the preceding statement of points this Sept. 11th, 1951.

(Sgd) RICHARD C. BALDWIN
Asst. United States Attorney for the Eastern District of Louisiana.

Amended and Supplemental Designation of Contents of Record—Filed September 13, 1951 (Omitted in printing)

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88 **Motion and Order Allowing All Exhibits to Be Sent to Court of Appeals in Their Original Form (Omitted in printing)**

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89 (Clerk's Certificate to foregoing transcript omitted in printing.)

Supplemental Transcript of Record from U. S. D. C.

92 [Caption omitted]

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93 IN UNITED STATES DISTRICT COURT

Supplemental Designation of Contents of Record—Filed November 15, 1951

The Defendant (Appellant) files the following supplemental designation of the contents of the record on appeal herein:

(9½) Include in the record the following motion made on behalf of Defendant at the close of the evidence, to-wit:

"September 10, 1951: 2:00 P.M. After recess:

No. 24,057, C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Mr. Coe: The defendant respectfully moves the Court to instruct the jury to disregard and strike out all of the evidence relating to the failure to notify the Draft Board of changes of address which occurred prior to March 30, 1951, and also move the Court separately to instruct the jury to disregard and strike out all of the evidence relating to non-receipt of communications from the Draft Board prior to March 30, 1951."

(Sgd) ALVIN B. JONES
Alvin B. Jones
403½ South Rampart Street
New Orleans, Louisiana.

94 (Sgd) JOHN M. COE
John M. Coe
202-205 Bell Building
Pensacola, Florida
Attorneys for Defendant
(Appellant)

Affidavit of Service (Omitted in printing)

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95 IN UNITED STATES DISTRICT COURT

Extract from Reporter's Transcript—Filed November 15, 1951

September 10, 1951: 2:00 P.M. After Recess:

Mr. Coe: The defendant respectfully moves the Court to instruct the jury to disregard and strike out all of the evidence relating to the failure to notify the Draft Board of changes of ad-

dress which occurred prior to March 30, 1951, and also move the Court separately to instruct the jury to disregard and strike out all the evidence relating to non-receipt of communications from the Draft Board prior to March 30, 1951.

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96 (Clerk's Certificate to foregoing transcript omitted in printing.)

Proceedings in U. S. C. A. for the Fifth Circuit

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97 **Argument and Submission—March 12, 1952 (Omitted in printing)**

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98 IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13802

ROOSEVELT WARD, JR., *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Eastern District of Louisiana.

Opinion of the Court—Filed April 5, 1952

Before HOLMES, RUSSELL, and RIVES, Circuit Judges.

HOLMES, Circuit Judge: The appellant was convicted on one count of an indictment charging him with violation of the Selective Service Act of 1948, Title 50 App., Section 465(b), U. S. Code, in that, between the dates of March 30, 1951, and May 31, 1951, he knowingly failed to furnish his local Selective Service Board with an address where mail might reach him, as required by Section 1641.3 of the Selective Service Regulations.

99 On September 18, 1948, appellant registered with a local Selective Service Board in New Orleans, La., giving as his address, and the address of the person who would always know his whereabouts, a certain street and number in that city. He stated his occupation as student, and place of employment as Wilberforce University, Wilberforce, Ohio. On June 7, 1949, a classi-

fication questionnaire was mailed to appellant at the New Orleans address.

On October 18, 1949, the Board wrote to appellant at the New Orleans address, notifying him that it had not received the completed questionnaire, and that he should contact the Board. On March 21, 1950, a duplicate questionnaire was mailed to him at the same address; and on March 30, 1951, the completed questionnaire was returned, with the registrant's address listed as 72 West 107 Street, New York City. In the space provided for the name and address of his employer, appellant wrote, "N. Y. Organizing Committee for a Labor Youth League, 799 Broadway, N. Y. C." A notice of classification was mailed to him on April 28, 1950, addressed to 72 W. 107 Street, New York, N. Y.

On January 15, 1951, an order to report for physical examination was mailed to him at 72 W. 107 Street, and was returned to the Board stamped, "Returned to sender. Removed. Left no address, New York, New York." The Board wrote a letter to Mrs. Dorothy Ward, whose name appellant had given as the person who would always know his whereabouts. On February 2, 1951, in response to the inquiry, she replied that she had not heard from Roosevelt Ward, Jr., and did not know where he was located; that the last address of which she knew was 204 W. 149th Street, New York, N. Y. A letter mailed to Ward at 204 W. 149 Street, New York City, was returned to the Board stamped, "Not at address given. New York City, N. Y."

A letter of inquiry was mailed to Wilberforce University; the university advised that Ward was not registered there, and suggested that he might be a student at the College of Education and Industrial Arts, Wilberforce, Ohio. In reply to a letter of inquiry, the latter stated that Ward had been enrolled there during 1946-1947, but could give no further information. An order to report for induction was mailed to Ward at 72 W. 107 Street, but was returned stamped, "Returned to sender. Moved. Left no address." The Board subsequently reported Ward as delinquent, and he was placed under arrest at 799 Broadway, New York City, by an agent of the Federal Bureau of Investigation.

On the trial of the case before a jury, the defendant testified that he had frequently changed his residence in New York City; that he had not notified the Board of such changes for the reason that he had listed his employer's address in the questionnaire that he had completed and returned to the Board; and that he had relied on that address as fulfilling the requirements of furnishing the Board with an address where mail might reach him. The questionnaire which was returned to the Board by Ward showed his address as being 72 West 107 Street. Under another section of the questionnaire was a space for the name and address of the reg-

istrant's employer, said address being given as 799 Broad-
101 way. Though the Selective Service registration card provided a space for the name and address of the registrant's employer at the time of registration, there was no space for the recordation of any change in the employer's address. There were spaces for the recordation of changes of the registrant's address. Appellant's registration card reflected all the changes of his address that had been reported to the Board, but reflected no change in the address of his employer; thus it still reported his employer as being Wilberforce University. The appellant introduced evidence to show that he had received mail addressed to him at 799 Broadway.

The court below instructed the jury, as requested by the defendant, that if it found from the evidence that the defendant furnished to said Board one or more of his correct addresses at which mail would be delivered to him, he was not guilty, "and you must find a verdict of acquittal." The court denied the defendant's requested instruction No. 3, which was to the effect that, in determining whether or not defendant in good faith furnished or failed to furnish his local board with his address where United States mail might reach him, the jury might take into consideration the provisions of subsection (b), Section 1642.41, of the Selective Service Regulations.[1] Appellant excepted to the court's including the following in its instructions to the jury: "The intent and motives of this defendant are the most important factors in this case."

The appellant has specified as error that the evidence was
102 insufficient to support the verdict; that the court erred in instructing the jury as to motive and intent, and in denying defendant's requested instruction No. 3; and that the court also erred in permitting the jury to consider evidence of other instances where the defendant neglected to give notice of changes of address, and of the mailing and non-receipt of communications outside of the period of time covered by the indictment. In overruling defendant's objections to the admission of evidence of events outside the dates in the indictment, the court below held, "One of the basic elements of this offense is knowledge, and evidence may be obtained which may not come within the dates specified in the indictment but may have very great relevancy on the question." In its instructions to the jury, the court stated that the law sought to punish a person only if he knowingly failed or neglected his duty; that an actual knowledge of the existence of an obligation

[1] "In endeavoring to locate and to secure the compliance of a delinquent prior to reporting him to the United States Attorney, the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address, as shown on Registration card. . ."

and a wrongful intent to evade it is of the essence.[2] We think that the court below was correct in its rulings on the evidence and in its instructions to the jury. Section 462 of the Act specifically provides that "any person . . . who shall *knowingly* fail or neglect to perform such duty," shall be punished. (Emphasis supplied.) See *United States* v. *Sebo*, 101 F. (2) 889, 891; *Weiss* v. *United States*, 122 F. (2) 675, 682, cert. den., 314 U. S. 687; *United*
103 *States* v. *Hoffman*, 137 F. (2) 416, 419; *United States* v. *Weiss*, 162 F. (2) 447.

No error was committed by the court in denying defendant's requested instruction No. 3. Section 1642.41(b) of the regulations, in prescribing the duties of the Board, does not relieve a registrant from the duties imposed upon him. Section 1642.3 of the regulations provides that "Compliance by a local board or any other agency of the Selective Service System with any or all of the procedures prescribed by the regulations in this part is not a condition precedent to the prosecuting of any person under the provisions of Section 12, Title I of the Universal Military Training and Service Act as amended." See also *Le More* v. *United States*, 253 Fed. 887, 893; *Freeman* v. *United States*, 96 F. (2) 13; *Locke* v. *United States*, 166 F. (2) 449, 451; *Williams* v. *United States*, 170 F. (2) 319, 321, cert. den., 69 S. Ct. 412. As to the question of the sufficiency of the evidence, we think it is plain that there was ample and substantial evidence to support the verdict; and this being so, it should not be disturbed. *Crumpton* v. *United States*, 138 U. S. 361; *Humes* v. *United States*, 170 U. S. 210; *Riddle* v. *United States*, 279 Fed. 216; *Beland* v. *United States*, 100 F. (2) 289; *Pullin* v. *United States*, 104 F. (2) 57; *Sanchez* v. *United States*, 108 F. (2) 735.

AFFIRMED.

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[2] Court's instruction: ". . . The Court accordingly instructs the jury that the Act does not denounce a criminal, every failure to perform a duty imposed by the statute or regulations, but only seeks to punish a person 'who shall knowingly fail or neglect' his duty. There must be a specific wrongful intent. An actual knowledge of the existence of an obligation and a wrongful intent to evade it is of the essence. Before this defendant can be found guilty this jury must be convinced beyond a reasonable doubt not only that he has failed to keep his board advised of the address where mail would reach him but also that he knowingly failed to do so. Unless the element of knowledge on the part of the defendant is found by you as a fact to have existed, or if you have a reasonable doubt of its existence, it will be your duty to acquit the defendant. The intent and motives of the defendant are the most important factors in this case."

104 IN UNITED STATES COURT OF APPEALS

No. 13802

ROOSEVELT WARD, JR.,

v.

UNITED STATES OF AMERICA.

Judgment—April 5, 1952

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

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105 (Clerk's Certificate to foregoing transcript omitted in printing.)

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106 SUPREME COURT OF THE UNITED STATES

No. 9 Misc. ———, October Term, 1952.

[Title omitted]

* * * * * * * * * * *

Order Allowing Certiorari—October 13, 1952

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 390.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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